

# SECTION 5

## **INVENTORY OF LANDS OF CONSERVATION AND RECREATION INTEREST**

Open space in the Town of Shelburne consists of farms, forests, parks, and recreation areas under both private and public ownership and management. This section provides a summary of lands that provide open space, wildlife habitat, agricultural and forest products, watershed protection, scenic landscapes and recreational opportunities. These lands all have some level of protection from development.

In general terms, ‘open space’ is defined as undeveloped land. In 2007, the Shelburne Open Space Committee adopted the following definition for the Town:

"Open space" is land that is undeveloped, generally without paved roads or permanent structures, and shall include, but not be limited to, land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh water marshes and other wetlands, river, stream, lake and pond frontage, lands to protect scenic vistas, land for wildlife or nature preserve and land for active or passive recreational use such as the use of land for community gardens, trails, and noncommercial youth and adult sports, and the use of land as a park, playground or athletic field.

In an Open Space and Recreation Plan, the focus is on undeveloped land that also contains aspects of the landscape valued by local residents: actively managed farm and forestland, wildlife habitat, protection and recharge of groundwater, public access to recreational lands and trail systems, important plant communities, structures and landscapes that represent the community’s heritage, flood control, and scenery. This land may have some level of protection from development or may be vulnerable to development pressures.

The term ‘natural resource’ describes the biological and physical components of an ecosystem that people depend on for their existence and for some, their livelihood. These components are air, surface and ground water, soil nutrients, vegetation, fisheries, and wildlife. Recreational facilities can include open space, parks, and developed areas like tennis courts and swimming pools. Open space and recreation plans typically identify areas of undeveloped land that contain precious natural and recreational resources so that when an opportunity to protect land becomes available to the town, it can efficiently focus limited funds to protect values most important to residents.

Communities across the country are protecting land from development to ensure that the scenic, recreational and resource-based aspects of the landscape remain unchanged. Open space can be protected from development in several ways that differ in the level of legal protection they provide, the method by which they are protected, and by the type of landowner. Section 5 will

deal with open space under four levels, or categories, of protection: permanently protected, temporarily protected, limited protection, and unprotected. These categories are briefly defined below:

- Land is considered to be **permanently protected** if it is 1) owned by a state conservation agency, a nonprofit conservation land trust or other conservation organization, or by the Town of Shelburne under the care and control of the Conservation Commission; or 2) the land is subject to a Conservation (CR) or Agricultural Preservation (APR) Restriction in accordance with M.G.L. Ch. 184, section 31;
- Privately owned land is considered to be **temporarily protected** if it is enrolled in one or more of the state's Chapter 61, Chapter 61A or Chapter 61 B current use tax abatement programs;
- All land owned by the Town of Shelburne except for cemeteries and land under the care and control of the Conservation Commission is considered to have **limited protection**; and finally,
- All privately owned land which is neither permanently nor temporarily protected, is considered to be **unprotected**.

These different levels of protection will be discussed in more detail as this section progresses. Areas of Shelburne under these different levels of protection are shown on the Protected Open Space Map at the end of this section, and are summarized below in Table 5-1.

Open space can be protected from development in several ways that differ in the level of legal protection they provide, the method by which they are protected, and by the type of landowner. When land is considered to be protected, it is intended to remain undeveloped in perpetuity. This level of protection is ensured in one of two ways: 1) ownership by a state conservation agency, such as the Department of Conservation and Recreation (DCR) or the Department of Fish and Game (DFG), a not-for-profit conservation land trust, or the local Conservation Commission or 2) attachment of a conservation restriction or similar legal mechanism to the deed.

A conservation restriction is a legally binding agreement between a landowner (grantor) and a holder (grantee) - usually a public agency or a private land trust; whereby the grantor agrees to limit the use of his/her property by forfeiting interests in the land (development being one type of interest) for the purpose of protecting certain conservation values. The conservation restriction may run for a period of years or in perpetuity and is recorded at the Registry of Deeds. Certain income, estate or real estate tax benefits may be available to the grantor of a conservation restriction.

There are several types of conservation restrictions. Some protect specific resources, such as forests, wildlife habitat or farmland. Active farmland with Prime soils or soils of Statewide Importance may be eligible for enrollment in the state's Agricultural Preservation Restriction (APR) Program. The APR program purchases the development rights and attaches a restriction to the deed, which legally bars development, keeping land permanently available for agriculture.

The development of any parcel of land that is in the APR Program, protected with a conservation restriction, owned by a state conservation agency, or owned by a land trust or a town for conservation purposes would require a vote by two thirds of the State Legislature as outlined in Article 97 of the Amendments to the Massachusetts State Constitution. This protection conveyed by Article 97 does have its limits. The state legislature has voted to release this protection at the request of local communities, so that conservation land can be used for schools, roads, economic development, or other public projects not related to resource protection. In the past, reforms have been proposed to make this process more difficult. It is important for local advocates of conservation to be vigilant of attempts to remove the protection status from open space in the Town of Shelburne.

For the purposes of this Open Space and Recreation Plan, cemeteries are also considered to be protected from development. Land in Massachusetts owned by towns or water districts may be considered to have permanent protection from development. However, unless there is a legal restriction attached to the deed or if the deed reads that the land was acquired expressly for water supply protection, the level of protection afforded these types of parcels varies depending on the policies of each community. In most cases, the water district would be required to show the Massachusetts Department of Environmental Protection just cause for converting the use of the land. However, this is not an insurmountable hurdle. The Town of Athol recently took their surface drinking water supplies off-line after developing a productive well field. A change in land use around the reservoir from water supply protection to active recreational use may occur.

**Table 5-1: Areas of Farmland and Forest Open Space by Ownership and Level of Protection from Development in Shelburne**

<b>PRIVATELY OWNED OPEN SPACE</b>	<b>Acres</b>	<b>% Of Total Land Area in Shelburne</b>
<b>Farmland</b>		
<i>Protected by Agricultural Preservation Restriction</i>	1,360.2	9.1%
<i>Temporarily Protected Farmland under Ch. 61A*</i>	1,964.8	13.1%
<b>Forestland</b>		
<i>Protected by Conservation Restriction</i>	429.0	2.9%
<i>Owned by a Conservation Organization</i>	647.2	4.3%
<i>Temporarily Protected Forestland</i>		
Chapter 61*	671.3	4.5%
Chapter 61B*	42.6	0.3%
<b>TOTAL PRIVATELY OWNED OPEN SPACE WITH SOME LEVEL OF PROTECTION</b>	<b>5,115.1</b>	<b>34.2%</b>
<b>PUBLICLY OWNED OPEN SPACE</b>	<b>Acres</b>	<b>% Of Total Land Area in Shelburne</b>
<b>Forestland</b>		
<i>Protected by State Conservation Agencies</i>		
Department of Conservation and Recreation – Division of State Parks and Recreation	74.7	0.5%
<i>Land Owned by Shelburne Falls Fire District</i>	297.0	2.0%
<b>Other Lands</b>		

<i>Cemeteries</i>	37.0	0.2%
<i>Land with Limited Protection Owned by Town of Shelburne</i>	32.8	0.2%
<b>TOTAL PUBLICLY OWNED OPEN SPACE WITH SOME LEVEL OF PROTECTION</b>	<b>366.8</b>	2.4%
<b>TOTAL OPEN SPACE WITH SOME LEVEL OF PROTECTION</b>	<b>5,556.6</b>	37.1%

\* Parcels enrolled in the Chapter 61 program that are also permanently protected by an Agricultural Preservation Restriction or Conservation Restriction, were not included in the Chapter 61 acreage totals, to avoid double counting.

Source: Town of Shelburne Assessor’s Records, 2012; and MassGIS Open Space data, 2012.

If a town-owned parcel of land is under the legal authority of the Select Board rather than the Conservation Commission, it is considered to have limited protection from development. The parcel could be called a wildlife sanctuary or a town forest, but not have the long-term protection afforded by Conservation Commission lands. In this case, converting a town forest to a soccer field or a school parking lot could be decided by the Select Board or at Town Meeting.

Parcels enrolled in Massachusetts Chapter 61 tax abatement programs are considered to be temporarily protected from development. This program offers landowners reduced local property taxes in return for maintaining land in productive forestry, agricultural or recreational use for a period of time. These “chapter lands” provide many public benefits, from maintaining wildlife habitat and recreational open space to sustaining rural character, and local forest and farm-based economic activity. Another benefit of the Chapter 61 programs is that they offer towns the opportunity to protect land. When a parcel that has been enrolled in one of the Chapter programs is proposed for conversion to a use that would make it ineligible for the program, or the owner wishes to sell the property, the town is guaranteed a 120-day waiting period during which it can exercise its right of first refusal to purchase the property. This is most effective if a community first identifies priority areas for protection in town, and sets aside funds for the purchase or transfer of ownership to a local land trust when a Chapter 61 parcel becomes available in a priority area.

Approximately 37 percent of the total land area in Shelburne is comprised of open space with some level of protection from development. The total land area of the town is 14,978 acres. The portion of the total land area that is considered as open space in this section is summarized in Table 5-1. It is divided into two main sections based on type of ownership: private and public. Within each of these major categories, parcels are differentiated by use (farm or forestland), by ownership and management, and by level of protection: protected, limited, and temporary (see level of protection definitions above on page 5-1). Table 5-2 provides a summary based on these three levels of protection. Approximately 19 percent of land in town is permanently protected from development; 18 percent is under temporary protection from development; and less than 1 percent of land has limited protection from development. It should be noted that the numbers presented in the tables are approximate, and are based on the total acreage of a parcel identified as having some type of protection. In the case of some restrictions, only a portion of a parcel may be set aside for protection, while another portion is set aside for a building or other purpose.

**Table 5-2: Summary of Protected Open Space in Shelburne**

Level of Protection	Acres	% of Total Land Area in Town (14,978 Acres)
<b>PERMANENTLY PROTECTED OPEN SPACE</b>		
Farmland (APR)	1,360.2	9.1%
Forestland (CR, State-owned, conservation organization)	1,150.9	7.7%
Cemeteries (public and private)	37.0	0.2%
Water and Fire District Land	297.0	2.0%
<b>Total Permanently Protected Open Space</b>	<b>2,845.1</b>	<b>19.0%</b>
<b>TEMPORARILY PROTECTED OPEN SPACE</b>		
Farmland (Ch. 61 A)	1,964.8	13.1%
Forestland (Ch. 61)	671.3	4.5%
Recreation Land (Ch. 61B)	42.6	0.3%
<b>Total Temporarily Protected Open Space</b>	<b>2,678.7</b>	<b>17.9%</b>
<b>OPEN SPACE UNDER LIMITED PROTECTION</b>		
Town owned open space	32.8	0.2%
<b>Total Open Space with Limited Protection</b>	<b>32.8</b>	<b>0.2%</b>
<b>TOTAL OPEN SPACE WITH SOME LEVEL OF PROTECTION</b>		
	<b>5,556.6</b>	<b>37.1%</b>

Source: Town of Shelburne Assessor's Records, 2012; and MassGIS Open Space data, 2012.

## **A. PRIVATELY OWNED PARCELS**

Approximately ninety-two percent of the undeveloped land with some degree of protection in Shelburne is privately owned. Most of this land is owned by individuals and is either forested or in use for agriculture. There are many advantages to private ownership of open space for the town. Privately owned open space contributes to the town's tax base. When used for farming or forestry, land also generates revenue, jobs, food, and forest products. Some landowners allow access to their property for recreational purposes. Most take pride in their land, which favors good stewardship. Finally, owning land gives people a sense of place. This is particularly true of residents whose families have owned land in Shelburne for generations. Land ownership encourages a sense of community and helps contribute to community stability over time.

Of the 5,115 acres of privately owned land in town with some level of protection, 52 percent is temporarily protected through the Chapter 61 program, while 48 percent is permanently protected through an Agricultural Preservation Restriction, Conservation Restriction, or because the land is owned by a conservation organization.

The major disadvantage for a town of having open space with cherished public values under private ownership is that it can easily be converted to other uses. Some landowners acquire land specifically for the purposes of development, but others are forced to sell property due to circumstances beyond their control. Aging, the death of a parent or spouse, financial needs of family and rising costs or declining profits of farming are common reasons why landowners

decide to put their property on the market. The high value of land for residential development is both a powerful incentive to sell property, and a formidable obstacle to people who might otherwise want to buy it for other purposes.

This section provides a detailed inventory of privately owned land in the Town of Shelburne and discusses the value of this land for conservation and recreation. Privately owned land provides many public benefits, but it is important to respect the property rights of landowners. While many landowners choose to keep their property in managed farms and forests, and some allow public access, it is important that residents respect the rights of those who make different choices.

### **Privately Owned Agricultural Land**

Farmland, including farm woodlots, orchards, and sugar maple stands, constitutes approximately 60 percent of the total amount of privately owned open space in Shelburne with some level of protection from development, and 22 percent of the town's total land base, according to MassGIS 2005 land use data. Approximately 41 percent of Shelburne's farm acreage with some level of protection includes land permanently protected for agricultural use by the Agricultural Preservation Restriction (APR) Program. Overall, twelve landowners have twenty-five parcels of land totaling 1,360 acres in the APR Program. This is an increase of 284 acres protected under the APR program since the 2004 Shelburne Open Space and Recreation Plan was completed. These restrictions are overseen by the Massachusetts Department of Agricultural Resources.

In xxxx, the citizens of the Town of Shelburne passed a Right-to-Farm Bylaw, which helps to protect and encourage the growth and development of farm-related businesses by protecting farmers and farm operators against nuisance lawsuits. Many rural communities have adopted Right-to-Farm bylaws in response to and to prevent the conflicts that arise between persons not involved in farming who move into traditional agricultural areas and then have complaints concerning odor, flies, dust, noise from field work, spraying of farm chemicals, slow moving farm machinery, and other necessary byproducts of farming operations.

Land enrolled in Chapter 61A is considered to be temporarily protected. In some cases, farmland enrolled in Chapter 61A abuts protected land. Conversion of even a small percentage of this land to residential uses could affect the viability of farming on the remainder. Location of new homes in proximity to active agricultural operations often results in conflict between new residents and farmers over the noise, dust, and odors that are part of normal agricultural practices. Increased commuter traffic on roads in agricultural areas also makes it difficult for farmers to move their equipment between fields. There are 1,964 acres of land enrolled in the Chapter 61A program as of 2012, that are not also protected with an APR or CR.

Much of the land enrolled in Chapter 61A also abuts rivers and streams. While agriculture can have negative impacts on water quality, these impacts can be reduced or avoided through the use of best management practices. When best management practices are observed, agriculture is compatible with watershed protection, because it keeps the land open, while development results in conversion of land to impervious surfaces, with negative impacts on water quality.

Agricultural lands enrolled in the Chapter 61A program offer much value to the town, even if the farmlands are only temporarily protected. First, the agricultural parcels often contain prime farmland soils, which should be preserved for continuing use. These privately owned open spaces also contribute to the town’s tax base and generate revenue, employment, and food products. In addition, some landowners may allow access to their property for recreational purposes, like hiking or snowmobiling. Most Chapter 61A landowners take pride in their land, while practicing good stewardship. They help to define a sense of place for Shelburne and contribute to community stability over time.

**Privately Owned Forested Land**

Approximately 72 percent of Shelburne’s total area is forest (10,713 acres). Most of the forested land in Shelburne is privately owned. Roughly 1,790 acres of privately owned forest is under some level of protection. Of this forest, about 714 acres, or 40 percent, is temporarily protected through the Chapter 61 and Chapter 61B program. The remaining 60 percent of privately owned forest under some level of protection is considered permanently protected from development, totaling 1,076 acres. This includes land protected by a Conservation Restriction, as well as 647 acres owned by conservation organizations, as shown in Table 5-3 below. Overall, the amount of privately-owned, permanently protected forestland has increased by 378 acres since the writing of the 2004 Shelburne Open Space and Recreation Plan. .

**Table 5-3: Permanently Protected Forestland Owned by Conservation Organizations**

<b>Owner</b>	<b>Address</b>	<b>Map</b>	<b>Lot</b>	<b>Acres</b>
Massachusetts Audubon Society	Patten Hill Rd.	30	10	30.0
Massachusetts Audubon Society	Patten Rd.	26	3	1.2
Massachusetts Audubon Society	Off Patten Rd.	26	4	364.0
Massachusetts Audubon Society	Colrain Rd.	30	2	3.0
Massachusetts Audubon Society	Colrain Rd.	30	22	80.0
Massachusetts Audubon Society	Patten Rd.	31	5	63.0
Massachusetts Audubon Society	Patten Rd.	31	6	30.0
Franklin Land Trust	Mohawk Trail	15	1	21.0
New England Forestry Foundation	James Barnard Rd.	8	13	55.0
<b>Total</b>				<b>647.2</b>

Source: MassGIS 2012 parcel data.

Land in the Ch.61 Forestland and the Ch. 61B Recreational Open Space Classification and Taxation Programs have short term or temporary protection. There are no public grants awarded as a result of the Program, however, the owner agrees not to change the land’s use for ten years while paying reduced property taxes during that time period. In addition, if the property owner decides to change the use or sell the property, the Town will have the right of first refusal to purchase the property or to transfer that right to a non-profit organization or the Commonwealth of Massachusetts.

In the Seven-Year Action Plan, Item I-1, B calls for a town-wide inventory of public and private forest lands. Privately owned forestlands offer many values to the community and are important resources for several reasons. First, many forestlands are large parcels with a low degree of fragmentation, so wildlife and plant habitats are preserved. When these forestlands are protected from development, they help to protect and provide clean water, air, and healthy wildlife populations. Forest soils have a high infiltration capacity, so they absorb moisture and permit very little surface runoff. Once absorbed, water is released gradually so flooding is reduced during large rain events and streamflow is maintained during low water months. Forests recycle nutrients, so the nutrients do not pass into waterways, and water quality is maintained. Because forest soils are absorptive, soil erosion is reduced and fish habitat is protected. Chapter 61 lands are managed for forest products, which result in employment of loggers, foresters, and local mill workers, income for landowners, and the availability of locally grown wood for flooring, furniture making and firewood. Many forested lands also provide recreational value for Shelburne residents. The Chapter 61 forests also help to preserve the character of the wooded landscapes in town.

A proposal in development calls for the potential for landowners to voluntarily enter into conservation restrictions on private forest lands which would then be overlaid with a National Forest designation. More study of this proposal and its potential pros and cons on Shelburne forests is required. Action Item I-1.-B of the Seven-Year Action Plan calls for an inventory of forest resources, and Action Item I-1.C calls for study and discussion of the USDA Forest Service proposal.

**B. PUBLICLY OWNED PARCELS**

Publicly owned protected open space equals approximately 3 percent of all of the open space that has some level of protection in town. Approximately 93 percent of this land is protected from development as cemeteries (*see Table 5-6*) (though not all cemeteries are publicly owned), under the ownership of the Commonwealth of Massachusetts (*see Table 5-4*), or owned by the Shelburne Falls Fire District for water supply protection purposes. The town itself owns 33 acres of open space in the Shelburne Falls Village Area (*see Table 5-5*).

**Table 5-4: Publicly Owned State Land Protected from Development in Shelburne**

Property Manager	Site Name/Location	Map	Lot	Acres	Current Use	Condition	Recreation Value	Public Access
Department of Conservation and Recreation	Wilcox Hollow State Park	16	3	25.70	State Park	Good	High	Access off Rte. 2; Access to Deerfield River; Links to Mahican-Mohawk Trail
Department of Conservation and Recreation	Shelburne State Forest	21	3	49.00	State Forest	Good	High	Off Tower Road on Massaemett Mtn; Hiking; Views.
<b>Total</b>				<b>74.70</b>				

Source: Town of Shelburne Assessor’s Records and Maps, 2012.



The Massachusetts Department of Conservation and Recreation, Division of State Parks and Recreation manages approximately 75 acres. The Shelburne Falls Fire District owns 297 acres on Patten Hill Road. Additionally, the Shelburne Fire District owns one acre on Common Road. The Town of Shelburne owns 33 acres of open space all of which have limited protection. All of the town-owned parcels are under the authority of the Select Board and are therefore considered to have limited protection from development. If residents wanted to sell town land for development, the Select Board or a Town Meeting vote could provide the authority. If the Conservation Commission held the land, it would take a majority vote by the Massachusetts State Legislature to convert open space to a non-conservation use. Some of these open spaces may be set aside for municipal uses like schools, parks, or historic sites.

**Table 5-5: Town-owned Land with Limited Protection from Development in Shelburne**

Site Name	Map	Lot	Acre	Current Use	Condition	Recreation Value	Public Access
Athletic Field	17	16	4.61	Little League Baseball Field (currently not in use)	Not currently maintained	High	Off Little Mohawk Road
Open Land	23	14	6.90	2 <sup>nd</sup> Lot on the right on Colrain-Shelburne road after intersection with Rte. 2	Good for open land	Potentially Good	Off Colrain-Shelburne Road
Bridge St. - open land to bank of Deerfield	40	114	1.00	Vacant, Steep Land between buildings	Good as green space	Low	Off Bridge Street
Bank to Potholes	41	101	0.13	No current use	Rock and water's edge	Potentially High	Off Deerfield Ave.
Mohawk Trail Regional School	43	35	13.76	Playground activities	Good	High	Off Mechanic Street
Mohawk Trail Regional School/Town of Shelburne	43	36, 49	4.73	Veterans' Memorial Field (Lot 49 is a ball field owned by the Town)	Lawn and blanket picnic area	High	Off Mechanic Street
Cowell Gym	43	44	1.55	Surrounding land used for parking and basketball/ tennis courts	Good	High	Off Maple Street
Deerfield Avenue bank to river	41	100.2	0.12	Steep, rocky. Could be used as access to river if opened for use. Currently not open to public.	Good	Has value as access point to river	Off observation deck on Deerfield Ave.
<b>Total</b>			<b>32.8</b>				

Source: 2012 MassGIS parcel data.

It is not unusual for a community to set aside land for future expansion of schools, sports fields, police and fire stations, and drinking water supplies. Open space planned for these purposes might be used as open space today and placed under the authority of the Select Board. It may also be sensible to place town-owned land that clearly contains wetlands or wildlife habitat, but which does not provide for easy development, under the authority and protection of the Conservation Commission.

Table 5-6 lists the cemeteries in Shelburne. Most cemeteries represent well-maintained open space areas that are sometimes appropriate for walking and bird watching.

**Table 5-6: Cemeteries in Shelburne**

Owner/Property Manager	Site Name	Map	Lot	Acres
	Shelburne Center Road Cemetery	12	40	1.38
	South Cemetery	13	30	1.00
Town of Shelburne	Hill Cemetery	17	21	2.06
	Shelburne Center Cemetery	23	22	1.00
Arms Cemetery Association	Arms Cemetery	25	11	31.60
<b>Total</b>				<b>37.04</b>

Source: Town of Shelburne’s Assessor’s Records and Maps, 2012.

### Scenic Byway Land Protection Projects

Two state designated scenic byways travel through Shelburne – the Mohawk Trail Scenic Byway (Route 2 and 2A), and the Route 112 Scenic Byway. Corridor management plans have been created for each of these byways through an extensive public participation process, and provide inventories of scenic, natural, historic, cultural, and recreational resources along the byways. The plans include goals and recommendations for maintaining these resources while also providing for tourism and the development of related amenities. The land along Rte.2 is zoned Commercial (see Zoning Map at the end of Section 3). Unfortunately, this zoning designation leaves it open for development which could compromise the scenic value of this route. As evidenced in the survey results, the balance between development, landowner rights and scenic corridor is a complex issue, and Action Item I-4-C of the Seven-Year Action Plan calls for establishing discussion points about this issue.

Funding has been available through the National Scenic Byway Program for various projects along designated byways, including the protection of scenic, historical, recreational, cultural, natural, and archaeological resources in an area adjacent to a byway. Funding has also been made available for the development of recreational facilities and amenities along a byway, such as improved access to recreational resources or safety improvements for pedestrians and cyclists.

After completion of the corridor management plans for each byway, a land protection program was established for both the Mohawk Trail Scenic Byway and for the Route 112 Scenic Byway. These programs commenced with the execution of a memorandum of understanding (MOU)

between MassDOT, the Massachusetts Department of Agricultural Resources (MDAR), the Massachusetts Department of Conservation and Recreation (DCR), the Franklin Land Trust, and the Franklin Regional Council of Governments (FRCOG). The MOU was a critical step in the implementation process and has paved the way for future land protection projects using scenic byway funding. The MOU details the specific steps of the land protection acquisition process and defines the roles of the agencies partnering in the project. To date, no projects have been completed in Shelburne through this program, though several large protection projects have been completed or are underway in neighboring towns within Shelburne's viewshed. The level of future funding for this program is uncertain at the writing of this plan.